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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/295,830	04/21/1999	HANS HEINLE	1-21294	7634
4859	7590	06/09/2005	EXAMINER	
MACMILLAN SOBANSKI & TODD, LLC ONE MARITIME PLAZA FOURTH FLOOR 720 WATER STREET TOLEDO, OH 43604-1619			VANAMAN, FRANK BENNETT	
			ART UNIT	PAPER NUMBER
			3618	

DATE MAILED: 06/09/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/295,830

Applicant(s)

HEINLE ET AL.

Examiner

Frank Vanaman

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 24 March 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 52-57 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 52-57 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 4/21/99 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

V7

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on March 24, 2005 has been entered.
2. Claims 52-57 are pending, all previous claims having been canceled.

Drawings

3. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the an air permeable plate which "is a radiator" (claim 57) must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Claim Objections

4. Claim 56 is objected to because of the following informality: on line 2 of claim 56, it appears as though "pivotally support on said support" should be - -pivotally supported on said support- -. Appropriate correction is required.

Claim Rejections - 35 USC § 112

5. Claim 57 is rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. This claim recites a radiator which is an air permeable plate. The specification as filed fails to teach such a device as claimed. The specification appears to teach instead the one of the radiators may be replaced by an air-permeable plate, but not that one of the radiators is an air-permeable plate.

6. Claims 52-57 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. In claim 52, line 15, "said bracket" lacks a clear antecedent basis; in claim 53, line 3, it is not clear whether the recited bracket is intended to refer to the same bracket as recited in claim 52, or another bracket; in claim 57, line 2, it is not clear how a radiator may be an air-permeable plate as claimed.

Claim Rejections - 35 USC § 103

7. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

8. Claims 52 and 53 are rejected under 35 U.S.C. 103(a) as being unpatentable over Liebherr-Werk (DE 295 04 867). Liebherr-Werk teaches a radiator arrangement for a vehicle including three radiator elements (11, 12, 13) and at least one condenser (note figures 4 and 5, support 9 supporting both a radiator and a condenser— "wasserkühler und kondensator") defining plural sides of a chamber, an air permeable plate element (4), a fan deflector guide (18), which is capable of supporting a fan to the breadth claimed, and is positioned outside of the first plate (4) by at least the plate and a bracket (15, 16) and thus on an exterior of the chamber defined by the radiators,

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support and plate, the assembly further including a plurality of upstanding support elements (7, 8).

The reference to Liebherr-Werk fails to teach the provision of a fourth radiator. The duplication of parts already taught by the prior art to enhance the effect already taught by such parts is not deemed to be beyond the skill of the ordinary practitioner, and as such, it would have been obvious to one of ordinary skill in the art at the time of the invention to provide a further radiator comparable to those already taught by Liebherr-Werk, for the purpose of providing cooling to one further system.

9. Claim 56 is rejected under 35 U.S.C. 103(a) as being unpatentable over Liebherr-Werk in view of Cambeis (DE 24 065, cited previously). The reference to Liebherr-Werk is discussed above and fails to teach at least one radiator being pivotally connected to provide access. Cambeis teaches a vehicle wherein a radiator (3) is provided with a swivel or pivot mount (5) in order to allow access to a further component. It would have been obvious to one of ordinary skill in the art at the time of the invention to make at least one radiator of the arrangement of Liebherr-Werk pivotally mounted as taught by Cambeis for the purpose of providing access to the inside of the chamber.

10. Claims 54 and 55 are rejected under 35 U.S.C. 103(a) as being unpatentable over Liebherr-Werk in view of Attinger (GB 2,234,721, cited previously). The reference to Liebherr-Werk fails to teach at least two radiators as having a plug element that is received in a matching counter element in the lower support element. Attinger teaches a well known mounting arrangement for a radiator (1) wherein the radiator is provided with a plug (3) which rests in a counter element formed in the vehicle body (6) comprising an aperture (5) and counter bushing (4). It would have been obvious to one of ordinary skill in the art at the time of the invention to provide at least two of the radiators, and their respective mountings, taught by Liebherr-Werk, with the plug and counter arrangement taught by Attinger, for the purpose of reducing the quantity of vibration transferred to the radiator during movement of the vehicle.

Claim not Rejected over the Prior Art

11. Claim 57 is not rejected as being anticipated by or obvious over the prior art of record, however they are not in condition for allowance in view of the rejections set forth above under 35 USC §112, first paragraph.

Response to Comments

12. Applicant's comments have been carefully considered. As regards the application under 35 USC §102 of the reference to Liebherr-Werk, the examiner agrees that the new claims as recited are not anticipated by the reference, note however the rejections under 35 USC §103. As regards applicant's arguments that the chamber is not defined by three radiators and a condenser, note Liebherr-Werk's three radiators (11, 12, 13) and the condenser (not referenced, but illustrated in figures 4 and 5) which do serve to define the chamber to the breadth currently claimed. Note, additionally, element 18, which may serve as a deflector to the breadth currently claimed, and which is capable of supporting a fan thereon, again to the breadth currently claimed.

It appears as though applicant may be suggesting that the examiner interpret the claims as including limitations which are not positively recited therein, or to a different scope than the claim recitation sets forth. Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

From MPEP 2111:

During patent examination, the pending claims must be given their broadest reasonable interpretation consistent with the specification. *In re Hyatt*, 211 F.3d 1367, 1372, 54 USPQ2d 1664, 1667 (Fed. Cir. 2000). Applicant always has the opportunity to amend the claims during prosecution, and broad interpretation by the examiner reduces the possibility that the claim, once issued, will be interpreted more broadly than is justified. *In re Prater*, 415 F.2d 1393, 1404-05, 162 USPQ 541, 550-51 (CCPA 1969) The court explained that "reading a claim in light of the specification, to thereby interpret limitations explicitly recited in the claim, is a quite different thing from 'reading limitations of the specification into a claim,' to thereby narrow the scope of the claim by implicitly adding disclosed limitations which have no express basis in the claim." The court found

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that applicant was advocating the latter, i.e., the impermissible importation of subject matter from the specification into the claim.). See also *In re Morris*, 127 F.3d 1048, 1054-55, 44 USPQ2d 1023, 1027-28 (Fed. Cir. 1997)

Conclusion

13. Any inquiry specifically concerning this communication or earlier communications from the examiner should be directed to F. Vanaman whose telephone number is 571-272-6701.

Any inquiries of a general nature or relating to the status of this application may be made through either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

A response to this action should be mailed to:

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Or faxed to one of the following fax servers:

Regular Communications/Amendments: 703-872-9326
After Final Amendments: 703-872-9327
Customer Service Communications: 703-872-9325

F. VANAMAN
Primary Examiner
Art Unit 3618



Handwritten signature of F. Vanaman, dated 6/6/05.